

Internal Revenue Service
memorandum

date:

to: District Counsel - Nashville
Attn: Nancy W. Hale, Senior Attorney

from: Chief, Branch 5
Office of Assistance Chief Counsel (Income Tax & Accounting)

subject: [REDACTED]
[REDACTED]
[REDACTED]
EIN: [REDACTED]

This is in response to your request for assistance regarding a determination request by [REDACTED]. Specifically, [REDACTED] has had timberland involuntarily converted within the meaning of section 1033 of the Internal Revenue Code. [REDACTED], and [REDACTED] the timber into [REDACTED]. [REDACTED] requests a determination letter regarding whether a proposed purchase of a [REDACTED] undivided interest in [REDACTED] shopping centers and an adjoining parcel of land (the "shopping centers") from [REDACTED] will constitute replacement property under section 1033. [REDACTED] plans to immediately lease the shopping centers to [REDACTED], its wholly owned subsidiary, for a fair market rental. [REDACTED] is engaged in the business of investing in real estate. Immediately thereafter, [REDACTED] will enter into a partnership agreement with [REDACTED] to operate the shopping centers.

[REDACTED] requests the following determinations:

(1) The [REDACTED] undivided interest in the shopping centers to be held as rental property constitutes "property similar or related in service or use" to the converted timberland within the meaning of section 1033 of the Code.

(2) [REDACTED] will not be considered to have purchased a partnership interest or to have entered into a partnership by reason of the lease to [REDACTED] or by reason of [REDACTED] entering into a partnership arrangement with [REDACTED] so long as the rental payments (and the option purchase price) to [REDACTED] represent fair market rental.

We decline to rule on either of [REDACTED]'s determination requests for two reasons. First, the Service generally has not issued rulings or determination letters regarding whether a partnership interest exists. Under section 18 of Rev. Proc. 90-

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1, 1990-1 I.R.B. 6, and section 2.01 of Rev. Proc. 90-3, 1990-1 I.R.B. 54, the Service ordinarily will not issue rulings or determination letters in certain areas (including whether a partnership exists) because of the factual nature of the problem involved, or for other reasons. Moreover, we are concerned that [REDACTED]'s proposed purchase of the [REDACTED] undivided interest in the shopping centers will cause [REDACTED] to purchase a partnership interest. Under sections 1.761-1(a) and 301.7701-3(a) of the Income Tax Regulations, a partnership exists if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent. If [REDACTED] purchases a partnership interest from [REDACTED], then [REDACTED] will not purchase replacement property under section 1033 of the Code. Under Rev. Rul. 55-351, 1955-1 C.B. 343, a purchase of a partnership interest is not a purchase of "other property similar or related in service or use to the property converted" within the meaning of section 112(f)(3)(A) of the 1939 Code (section 1033's predecessor), even though the partnership owns and operates property similar to the property converted. See also Rev. Rul. 57-154, 1957-1 C.B. 262.

Second, even if the Service were to rule that [REDACTED] will purchase replacement property followed by a contribution to a partnership, the Service would rule adversely on the "to be held" requirement. [REDACTED] proposes to satisfy the "similar or related in service or use" requirement by purchasing like-kind replacement property. Under section 1033(g) of the Code, if real property held for productive use in a trade or business or for investment is compulsorily or involuntarily converted, property of a like kind to be held either for productive use in a trade or business or for investment will be treated as property similar or related in service or use to the property so converted. Section 1033. The same "to be held" requirement exists in section 1031. If [REDACTED] purchases replacement property and immediately thereafter contributes the property to a partnership, then the replacement property will not be acquired "to be held either for productive use in a trade or business or for investment." This position is consistent with Rev. Rul. 75-292, 1975-2 C.B. 333. Rev. Rul. 75-292 holds that an exchange, immediately followed by a transfer of the received property to a newly created corporation under section 351 of the Code, does not qualify as an exchange under section 1031. While Rev. Rul. 75-292 was not followed in Magneson v. Commissioner, 753 F.2d 1490 (9th Cir. 1985), aff'g, 81 T.C. 767 (1983), the Service will continue to follow Rev. Rul. 75-292 until it is either modified or revoked.

We hope that this information will be helpful when you respond to [REDACTED]. If you have any questions, please contact Lindsay Russell at (202 or FTS) 343-2381.